

1
2
3
4
5
6
7
8
9
10
11
12

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against,

**GWANG M. KIM, M.D.
633-13 Bukjeong Dong
Dasom Villa #204
Yangsan Kyung Nam 626-110
South Korea**

**Physician's and Surgeon's Certificate No.
AFE 41115**

One.

Case No. 16-2010-205656

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

13
14
15
16
17
18
19
20
21
22

FINDINGS OF FACT

1. On or about June 10, 2010, Complainant Linda K. Whitney, in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs, filed Accusation No. 16-2010-205656 against Gwang M. Kim, M.D. (Respondent) before the Medical Board of California.

2. On or about August 13, 1984, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. AFE 41115 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2012, unless renewed. A Retired Status was granted at the Respondent's request on April 1, 2010 by the Board. (Exhibit Package¹, Exhibit 1, License Certification.)

3. On or about June 10, 2010, an employee of the Board served by certified and first class mail a copy of Accusation No. 16-2010-205656, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 (Accusation Packet) to Respondent's address of record with the Board, which was and is 633-13

27
28

¹ The evidence in support of this Default Decision and Order is submitted herewith as the "Exhibit Package."

1 Bukjeong Dong, Dasom Villa #204, Yangsan Kyung Nam 626-110, South Korea. (Exhibit
2 Package, Exhibit 2, Accusation Packet, declaration of service.) No return receipt or envelope was
3 returned to the Board. On or about November 9, 2010, an employee of the Board served by U.S.
4 registered mail another Accusation Packet to Respondent's address of record on file with the
5 Board, which was and is 633-13 Bukjeong Dong, Dasom Villa #204, Yangsan Kyung Nam 626-
6 110, South Korea. On or about January 31, 2011, the Accusation Packet sent by U.S. registered
7 mail was returned by the U.S. Postal Service marked "Addressee Unknown." (Exhibit Package,
8 Exhibit 3, Accusation Packet, declaration of service, copy of envelope returned by the post
9 office.) No response was made to the Accusation.

10 4. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c).

12 5. On or about November 5, 2010, employees of the Attorney General's Office sent by
13 certified regular mail, and U.S. registered mail addressed to Respondent at the address of record
14 set forth above, a courtesy Notice of Default, advising Respondent of the service of the
15 Accusation, and providing him with an opportunity to request relief from default. The envelope
16 containing the Notice of Default sent by U.S. registered mail was returned on or about December
17 2, 2010 and was marked as "Unknown Addressee." (Exhibit Package, Exhibit 4, Notice of
18 Default.)

19 6. Government Code section 11506 states, in pertinent part:

20 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
21 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
22 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
23 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

24 7. California Government Code section 11520 states, in pertinent part:

25 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
26 agency may take action based upon the respondent's express admissions or upon other evidence
27 and affidavits may be used as evidence without any notice to respondent."
28

8. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 16-2010-205656. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in the exhibits attached hereto, the Board finds that the allegations Accusation No. 16-2010-205656 are true as follows:

On or about March 4, 2010, the State of Washington Department of Health Medical Quality Assurance Commission (hereinafter “the Commission”) issued a Stipulation to Informal Disposition (hereinafter “Stipulation”) against Respondent’s medical license. Respondent’s medical license was placed on probation for one year subject to various terms and conditions including, but not limited to, continuing medical education, medical record keeping, practice review, and cost recovery. The basis for this action was Respondent’s failure to adequately document the liposuction procedure performed on two patients. (Exhibit Package, Stipulation to Informal Disposition, attached to Accusation as Exhibit A.)

DETERMINATION OF ISSUES

1. Pursuant to the foregoing Findings of Fact, Respondent's conduct and the action taken by the Commission regarding Respondent's license to practice medicine in Washington constitutes cause for disciplinary action and/or unprofessional conduct within the meaning of Business and Professions Code sections 141 and 2305.

2. The agency has jurisdiction to adjudicate this case by default.

ORDER

IT IS SO ORDERED that Physician's and Surgeon's Certificate No. AFE 41115, heretofore issued to Respondent Gwang M. Kim, M.D., is revoked.

//

//

//


//

1 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
2 written motion requesting that the Decision be vacated and stating the grounds relied on within
3 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
4 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

5 This Decision shall become effective on April 14, 2011, at 5 p.m.

6 It is so ORDERED March 15, 2011.

7
8 MEDICAL BOARD OF CALIFORNIA
9 DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 By 
12 LINDA K. WHITNEY
13 Executive Director

14 SF2010200631
15 10659993.doc
16
17
18
19
20
21
22
23
24
25
26
27
28

1 EDMUND G. BROWN JR.
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 SUSAN K. MEADOWS
Deputy Attorney General
4 State Bar No. 115092
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5552
6 Facsimile: (415) 703-5480
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 10, 2010
BY: J. Delahant ANALYST

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 16-2010-205656

12 **GWANG M. KIM, M.D.**
13 **633-13 Bukjeong Dong**
14 **Dasom Villa #204**
15 **Yangsan Kyung Nam 626-110**
16 **South Korea**

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. AFE 41115**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21
22 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
23 as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

24 2. On or about August 13, 1984, the Medical Board of California issued Physician's and
25 Surgeon's Certificate Number AFE 41115 to Gwang M. Kim, M.D. (Respondent). A Retired
26 Status was granted at the physician's request on April 10, 2010. The certificate number is now
27 AFE 41115. This certificate is renewed and current with an expiration date of March 31, 2012.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 2
- 2
- 2
- 2
- 2
- 2
- 2

2
3
4

5
6
7
8

9

10
11
12
13
14
15

16

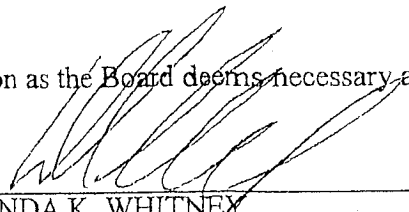
17
18
19
20
21
22
23

2
2
2

1 3. Revoking, suspending or denying approval of the Respondent's authority to supervise
2 physician assistants; and,

3 4. Taking such other and further action as the Board deems necessary and proper.

4 DATED: June 10, 2010.


LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

8 SF2010200631

EXHIBIT A



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Gwang M. Kim, MD
Master Case No. M2009-748
Document: Stipulation to Informal Disposition

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Privacy Officer, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

I certify that this is a true and correct copy of the
Document on file with the State of Washington,
Department of Health, Adjudicative Clerk Office

31 day of March 2010

Signature, Authorized Representative

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

In the Matter of the License to Practice
as a Physician and Surgeon of

GWANG M. KIM, MD
License No. MD00030888

Respondent.

No. M2009-748

STIPULATION TO INFORMAL
DISPOSITION

1. STIPULATION

Pursuant to the Uniform Disciplinary Act, Chapter 18.130 RCW, the Medical Quality Assurance Commission (Commission) issued a Statement of Allegations and Summary of Evidence (Statement of Allegations) that alleges the circumstances and conduct described below in paragraphs 1.1 through 1.4. Respondent stipulates to these allegations but does not admit to any unprofessional conduct.

1.1 On May 24, 1993, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent is a non-board certified family medicine physician. Respondent is a member of the American Academy of Cosmetic Surgery and the American Society of Laser Medicine and Surgery. Respondent's license is currently active.

1.2 Respondent practiced in California from 1984 until the summer of 2008, when he moved to Kirkland, WA. Respondent returned to California in January 2009. Respondent moved to Yangsan, South Korea in August 2009.

1.3 On September 19, 2008, Respondent performed liposuction on Patient A's abdomen, flanks, and thighs, using a LipoLite laser. Respondent's documentation of the procedure fails to show that Patient A was monitored before, during, and after the procedure. Respondent's documentation shows no intra-operative monitoring of vital signs and no notation of drugs administered during the procedure. Surgery notes consist of "canned" notes that are part of the document template.

1.4 On November 18, 2008, Respondent performed liposuction on Patient B's abdomen, flanks, and waist, using a LipoLite laser. Respondent's documentation of the procedure fails to show that Patient B was monitored before, during, and after the

STIPULATION TO INFORMAL DISPOSITION
NO. M2009-748

PAGE 1 OF 6

5710 - REV. 2-07

procedure. Respondent's documentation shows no intra-operative monitoring of vital signs and no notation of drugs administered during the procedure. Surgery notes consist of "canned" notes that are part of the document template.

1.5 The Commission alleges that the conduct described above, if proven, would constitute a violation of RCW 18.130.180(4).

1.6 The parties wish to resolve this matter by means of a Stipulation to Informal Disposition (Stipulation) pursuant to RCW 18.130.172(1).

1.7 Respondent agrees to be bound by the terms and conditions of this Stipulation.

1.8 This Stipulation is of no force and effect and is not binding on the parties unless and until it is accepted by the Commission.

1.9 This Stipulation shall not be construed as a finding of unprofessional conduct or inability to practice.

1.10 This Stipulation is not formal disciplinary action. However, if the Commission accepts it, it will be reported to the Health Integrity and Protection Databank (45 CFR Part 61), and it may be reported to the National Practitioner Databank (45 CFR Part 60) and elsewhere as required by law.

1.11 The Statement of Allegations and this Stipulation are public documents and will be placed on the Department of Health's website. They are subject to disclosure under the Public Records Act, Chapter 42.56 RCW, and shall remain part of Respondent's file according to the state's records retention law and cannot be expunged.

1.12 The Commission agrees to forego further disciplinary proceedings concerning the allegations.

1.13 Respondent agrees to successfully complete the terms and conditions of this informal disposition.

1.14 A violation of the provisions of Section 2 of this Stipulation, if proved, would constitute grounds for discipline under RCW 18.130.180 and the imposition of sanctions under RCW 18.130.160.

2. INFORMAL DISPOSITION

The Commission and Respondent stipulate to the following terms.

2.1 Probation. The Commission places Respondent's license on PROBATION for at least one year from the effective date of this Stipulation to Informal Disposition.

2.2 Continuing Medical Education. Respondent will successfully complete continuing medical education (CME) covering the subject of documentation/charting of patient encounters. Respondent will complete the required course within twelve (12) months of the effective date of this Stipulation. The Commission's Medical Consultant must approve the course in advance. The Case Western Intensive Course in Medical Record Keeping is pre-approved. The medical record keeping CME hours will not count toward Respondent's statutorily mandated minimum CME requirement.

2.3 Recordkeeping. Respondent will complete a thorough history and physical on every patient he treats, including patients seeking cosmetic medical treatment. The history and physical must become a permanent part of the patient's file. All assessment and diagnoses must follow the SOAP format. Respondent must maintain progress notes of every patient undergoing cosmetic surgery. Progress notes must include monitoring of the patient before, during, and following the surgical procedure, intra-operative monitoring of vital signs, and drugs administered during the procedure.

2.4 Practice Review. Respondent agrees that a representative of the Commission may make announced semi-annual visits to Respondent's practice to review compliance with this Stipulation. The representative will review current patient medical records to determine whether Respondent is following the Recordkeeping protocol described in paragraph 2.3. The representative may copy relevant records for review by the Commission.

2.5 Comply with Office-Based Surgery Rules. Respondent agrees to comply with WAC 246-919-601, Safe and Effective Analgesia and Anesthesia Administration in Office-Based Settings, scheduled for adoption in mid-January 2010, and likely to become effective in February 2010.

2.6 Cost Recovery. Respondent shall reimburse costs to the Commission in the amount of \$1000 which must be received by the Commission within ninety days of the date of entry of this Stipulation to Informal Disposition. The reimbursement shall be paid by certified or cashier's check or money order, made payable to the Department of Health and mailed to the Department of Health, Medical Quality Assurance Commission at P.O. Box 1099, Olympia, Washington 98507-1099.

2.7 **Termination.** Respondent shall be subject to the terms of this Stipulation for one year. The Commission will release Respondent from this Stipulation to Informal Disposition when Respondent provides written proof that he has successfully completed all the terms. A Compliance Officer will send Respondent a letter stating Respondent is released from the Stipulation to Informal Disposition. Respondent will not have to file a petition for release or appear before the Commission.

2.8 **Obey Laws and Regulations.** Respondent shall obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.

2.9 **Compliance Costs.** Respondent shall assume all costs of complying with this Stipulation to Informal Disposition.

2.10 **Violation of Stipulation.** If Respondent violates any provision of this Stipulation to Informal Disposition in any respect, the Commission may take further action against Respondent's license.

2.11 **Change of Address.** Respondent shall inform the Commission and the Adjudicative Clerk Office in writing, of changes in his residential and/or business address within thirty (30) days of such change.

2.12 **Effective Date.** The effective date of this Stipulation to Informal Disposition is the date the Adjudicative Clerk Office places the signed Stipulation to Informal Disposition into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Stipulation to Informal Disposition.

3. COMPLIANCE WITH SANCTION RULES

3.1 The Commission applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions, including stipulations to informal dispositions under RCW 18.130.172. Respondent's alleged conduct falls in Tier A of the "Practice Below Standard of Care" schedule, WAC 246-16-810. Respondent's failure to adequately document patient encounters placed patients at risk of minimal harm.

3.2 Tier A requires the imposition of sanctions ranging from zero to three years of oversight. Under WAC 246-16-800(3)(d), the starting point for the duration of the sanctions is the middle of the range. The Commission uses aggravating and mitigating factors to move towards the maximum or minimum ends of the range.

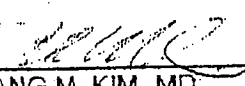
3.3 The aggravating and mitigating factors in this case, listed below, justify moving toward the minimum end of the range. The sanctions in this case include one year probation, Continuing Medical Education, and semi-annual practice reviews. These sanctions are appropriate within the Tier A range given the facts of the case and the following aggravating and mitigating factors:

3.4 The following are *mitigating* factors: (a) Respondent has practiced family medicine for 30 years and cosmetic dermatology for 8 years; (b) The conduct is partially attributable to a systems problem; (c) Respondent cooperated with the investigation.

3.5 The following are *aggravating* factors: (a) The conduct involved at least two patients.

4. RESPONDENT'S ACCEPTANCE

I, GWANG M. KIM, Respondent, certify that I have read this Stipulation to Informal Disposition in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Commission without my appearance. If the Commission accepts the Stipulation to Informal Disposition, I understand that I will receive a signed copy.



GWANG M. KIM, MD
RESPONDENT

1-20-2010
DATE

THOMAS H. FAIN, WSBA #
ATTORNEY FOR RESPONDENT

DATE

4. COMMISSION'S ACCEPTANCE

The Commission accepts this Stipulation to Informal Disposition. All parties shall be bound by its terms and conditions.

DATED: March 4, 2010.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

Judi M. Tobin
PANEL CHAIR

PRESENTED BY:

Karen M. Caille
KAREN M. CAILLE, WSBA #31351
DEPARTMENT OF HEALTH STAFF ATTORNEY